XII-189 (Jail) C J.P.R./9-94

CA 1592/96

(2)

CF0000060611

APPEAL OF PRISONER Division Bench (Criminal)

सत्र प्रक० क्र० 266/94 Name भरत लाल

father's name जामुन प्रसाद.

Residence मु०-15 लोकोरवा, थाo-कोरवा Age 20 वर्ष,

Sentenced to आजीवन कारावास, on 26-8-96

Under Section 302 भा० द० वि०, by I- A.D.J. B.S.P.

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement

2 Date on which copy received 26-8-96

3 Date on which Appeal sent क्रमांक/211 अपील/96 दिनांक- 31-8-96

4 Whether the prisoner wishes to be represented or not.

No ब-दी-नम्बर 1691/54 Name भरत लाल वी. जामुन प्रसाद.

Confined in मo प्र० जिला - Jail बिलासपुर (मध्य प्र०)

No. 211 Dated 31-8-1996

Forwarded to the रजिस्ट्रार उच्च न्यायालय मध्यप्रदेश जबलपुर।

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent

अधीक्षक

जिला जेल बिलासपुर

Date of receipt in Office

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate court

(P. T. O.)

(16)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.App 1592/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

6.3.2006

Miss Binu Banerjee, Advocate for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

By this appeal under Section 374 (2) of the Cr.P.C. appellant Bharatlal Rajput has questioned the legality & correctness of the judgment of conviction and order of sentence dated 26.8.1996 passed in S.T.No.266/94, whereby learned 1st Additional Sessions Judge, Bilaspur after holding the accused/appellant guilty for committing murder of Sheetal convicted him under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

The prosecution case, in brief, is that on 7.9.1994 at 19.05 p.m. Arjun Sidar (PW-1) lodged the F.I.R. (Ex.P-1) in the Police Station, Korba to the effect that he is the resident of Kuanbhatta and working with Vasu Contractor. Mauli Bai (PW-2) along with her two daughters is residing in his house as tenant @ Rs.100/- per month and in between accused Bharatlal, husband of Mauli Bai, also used to come and stay with Mauli Bai oftenly. Both the girl child of Mauli Bai were from her previous husband. Today Mauli Bai went to do work in others house and returned from her work in the evening. When he returned from his

-2-

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-2-	

work, he saw that near his tenant's house number of persons were standing and Mauli Bai was weeping, on which he went near her and enquired from her as what has happened, then Mauli Bai informed him that her daughter Manisha told her that Bharatlal has committed murder of her daughter Sheetal by pressing her neck, blood is oozing out of the nose and ear of Sheetal. Hearing this I have come to lodge the report. Receiving this report, the Station House Officer, Police Station Korba registered the Crime No.825/96 for commission of offence under Section 302 of the IPC, left for the scene of occurrence and after giving notice (Ex.P-2) to the Panchas prepared the Panchnama (Ex.P-3) of the dead body of Sheetal, aged about 1½ years. Dead body was sent for postmortem examination to Primary Health Centre, Korba under Ex.P-4, where PW-6 Dr. B.P. Kanwar, Assistant Surgeon conducted the postmortem on the body of deceased and prepared the postmortem report Ex.P-5, in which he opined that in his opinion the death occurred due to asphyxia as a result of strangulation.

After completion of investigation, charge sheet was filed in the Court of learned Judicial Magistrate First Class, Korba, who in turn committed the case to learned Sessions Judge, Bilaspur from where learned 1st Additional Sessions Judge, Bilaspur received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined six witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused under Section 313 of

-8-

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent. He has further stated that as Mauli Bai wanted to marry with him and he refused, therefore, he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the Additional Public Prosecutor and counsel for accused convicted and sentenced the accused as mentioned above in Para-1 of this judgment.

Homicidal death of Sheetal is not in dispute.

As far as the involvement of accused/appellant in committing the murder of Sheetal is concerned, the prosecution case rests on the ocular evidence of PW-3 Manisha, daughter of Mauli Bai (PW-2) & elder sister of deceased Sheetal. Learned counsel for the accused/appellant argued that evidence of PW-3 Manisha, a child witness does not inspire the confidence, as in the natural course when she witnessed the crime why she did not went to the neighbourers and disclosed the matter to them. She further argued that there are omissions and contradictions in the evidence of PW-3 Manisha. She further argued that there is delay in lodging the report.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

It is admitted position that PW-3 Manisha is a child witness, aged about 6 years, and for placing reliance on the evidence of a child witness the Hon'ble Apex Court in the matter of **Arbind Singh Vs. State of Bihar** reported in **1995 Supp (4) Supreme Court Cases** held that

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"child witness is prone to tutoring and hence court should look for corroboration particularly when the evidence betrays traces of tutoring." Again in the matter of **Panchhi and others Vs. State of U.P.** reported in **AIR 1998 Supreme Court 2726** the Hon'ble Apex Court held that *" it cannot be said that the evidence of a child witness would always stand irretrievable stigmatized. It is not the law that if a witness is a child his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring."* In the matter of **Ratan Singh Dalsukhbhai Nayak Vs. State of Gujarat** reported in **2004 Supreme Court Cases (Cri.) 7** the Hon'ble Apex Court held that *"the evidence of a child witness is permissible if such witness is found competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same, where the witness described the detail scenario implicating the appellant, conviction can be based placing reliance thereupon."* Therefore, the evidence of a child witness needs close scrutiny in order to ascertain whether the evidence of a child witness inspires the confidence of the court and there is no chance of any tutoring or otherwise before placing reliance on the evidence of a child witness.

Applying the above principle, if we scrutinize the evidence of PW-3 Manisha, who has stated that on the fateful day her mother went to do work in others house and Bharatlal was at the residence. She along

-5-

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-5-	

with her younger sister Sheetal was at the residence. Sheetal was not able to walk, however, she was able to sit. On that day her sister was weeping, therefore, accused became annoyed and he assaulted her with the leg. He pressed the neck of Sheetlal by leg. He assaulted her twice, as a result of which she died. On being assaulted by accused, blood started oozing out of her nose, thereafter, accused covered the body of Sheetal with the bed sheet and left the house. When she tried to wake up Sheetal for giving food, she did not wake up. In the evening when her mother returned she informed her mother that Sheetal is not rising and also disclosed to her mother that accused Bharatlal has committed murder of Sheetal by pressing her neck. Thereafter, her mother saw Sheetal, she came out and sat. In the night, people of the vicinity came and saw her sister and thereafter the police came. She also disclosed to the police that Bharatlal murdered her sister because he became angry when her sister was weeping. PW-2 Mauli Bai, mother of this witness PW-3 and deceased, has stated in her evidence that she was having two female children namely Manisha & Sheetal from her previous husband namely Baburaj, as Baburaj left her, therefore, she married with accused and was residing with accused in a rented house at Kuanbhattapara, Korba. She gave birth to second child before the marriage with the accused and she was about 1½ years age. In the house she herself, Bharatlal, Manisha & Sheetal were residing. Accused Bharatlal was working in the garage of Sardarji and she used to do the work of cleaning utensils in others houses. Behaviour of the accused

-6-

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

towards her children was not good. On the fateful day, Bharatlal was at the residence, she left for her work leaving behind Bharatlal and her daughters in the house. She returned at about 5.00 p.m. in the evening. When she reached the house she saw that Manisha was weeping & sitting at the door of the house, therefore, she enquired from her as to why she is weeping, then Manisha disclosed to her that the father has murdered Sheetal. When she reached the house, accused was not at the residence. Manisha informed her that after committing murder accused covered the body of Sheetal with a bed sheet. She went inside the house and saw that Sheetal was lying on the floor and was covered with bed sheet, when she removed the bed sheet she saw that the blood was coming out from the side of nose and there were marks of injuries on the neck and Sheetal was already dead. Thereafter she started weeping on which people of vicinity came and thereafter matter was reported to the police. PW-1 Arjun, who was the landlord of PW-2 Mauli Bai, has stated in his evidence that in the evening he returned from his work, he saw that number of persons were collected in front of the house of his tenant, he went there and enquired, on which he was informed that younger daughter of Mauli Bai was murdered. He saw that blood was coming out of the nose of the girl and there were marks of injuries on her body.

In view of the above evidence, the evidence of PW-3 Manisha inspires the confidence of the court, for the reasons, that she has categorically narrated the manner in which the accused assaulted

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

-7-

deceased Sheetal. Her evidence stands corroborated by the medical evidence because doctor (PW-6) has stated in his evidence that he conducted the postmortem on the body of deceased and found as many as 7 injuries on her body, there were abrasions injury No.6 & 7 on the neck and he opined that death occurred due to asphyxia as a result of strangulation. Therefore, the statement of Manisha (PW-3) that Bharatlal pressed the neck of Sheetal with leg stands corroborated by the medical evidence. Moreover, PW-3 Manisha immediately narrated the whole story to her mother Mauli Bai (PW-2) and Mauli Bai has deposed the same before the Court. There is nothing in the cross-examination of this witness, which makes the evidence of this witness unreliable or untrustworthy.

So far as the argument advanced by learned counsel for the accused/appellant that the evidence of PW-3 becomes doubtful as to why she has not narrated the incident to the neighbourers, we do not find any substance in this argument because Manisha is also a six years old child and it cannot be expected from her that she will go to the neighbourer house and disclosed what has happened in her house. So far as the argument advanced by learned counsel for the accused/appellant regarding delay in lodging the FIR is concerned, the incident is dated 7.9.1994, on the same day evening at 19.05 p.m. report was lodged and as per evidence of PW-1 Arjun & PW-2 Mauli Bai, Mauli Bai returned at about 5.00 p.m. in the evening after finishing her work, Manisha narrated the incident to her and thereafter, PW-1 Arjun

-8-

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

also came from his work and when he saw number of persons collected in front of the house of Mauli Bai, he enquired and thereafter, he went to the police station. Therefore, it cannot be said that there was any delay in lodging the report in order to cook up a false case against the accused/appellant. Moreover, the conduct of accused/appellant was also admissible under Section 8 of the Indian Evidence Act for the reasons that as per evidence of PW-2-Mauli Bai, accused used to reside with her, but on the fateful day after committing the crime in question, he disappeared from the house and in the evening he was not at the residence. The evidence of PW-3 Manisha further stands corroborated by the report which was lodged in the police station in which all the facts are mentioned which has been stated by PW-3 Manisha.

In view of the above, we are of the considered opinion that there is no illegality or infirmity in the finding of the trial court and as such there is no substance in this appeal, same is liable to be dismissed and accordingly, it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-

[पीछे देखिये